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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,773	09/15/2003	Markus Schmid	028987.52499US	7243

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CROWELL & MORING LLP  
INTELLECTUAL PROPERTY GROUP  
P.O. BOX 14300  
WASHINGTON, DC 20044-4300

EXAMINER
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FISCHMANN, BRYAN R

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 05/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/661,773	<b>Applicant(s)</b> SCHMID ET AL.	
	<b>Examiner</b> Bryan Fischmann	<b>Art Unit</b> 3618	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413) _____               |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9-15-03 &amp; 12-09-03</u>  | 6) <input type="checkbox"/> Other: _____                                    |

***Specification***

1. The abstract of the disclosure is objected to because of the following:

A) The last two lines of the abstract are objected to, for reasons set forth in the claim objection to the last two lines of claim 1.

2. The specification is objected to because of the following:

A) The following recited phrases are unclear, awkwardly worded, and/or grammatically incorrect:

1) The abbreviations "PP GF30 and "PA 6.6" recited in paragraph 0021 are objected to, as it is not clear what materials are being referred to by these abbreviations.

Note that identifying the actual materials represented by these abbreviations may constitute new matter, unless Applicant can provide evidence that one of ordinary skill in the art would recognize the actual material by these abbreviations.

B) The following inconsistencies in nomenclature were noted:

1) Paragraph 0017 recites "stationary body 2". Paragraph 0018 recites "adjacent body 2". Paragraph 0019 recites "adjoining body 2".

2) Paragraph 0017 recites "forward covering part 7". Paragraph 0018 recites "elastic covering part 7" and "covering part 7".

3) Paragraph 0021 recites both "transversely extending bottom part 0018" and "profiled rail-shaped bottom part 18". Paragraph 0030 recites "profiled bottom part 18".

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Art Unit: 3618

4) Paragraph 0022 recites "top part 0017". Paragraph 0024 recites "elastic elements 17" and "elastic elements 27 (2 places)".

To avoid confusion to the reader, and to facilitate identifying components by nomenclature in the claims, it is requested Applicant use consistent nomenclature for the same reference number throughout the specification.

### ***Drawings***

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign not mentioned in the description: 45. Correction is required.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following must be shown or the features canceled from the claims. No new matter should be entered.

Claim 1 – a supporting frame fastened to an adjoining body (see the 112 1<sup>st</sup> paragraph rejection of claim 1 for additional details)

See also claims 22 and 28 for a similar objection.

Claims 17-19, 27, 32 and 33 – the body-side holding and fastening links for the body side holding

Claims 20 and 21 - the intermediate pieces allowing radiators of different heights to be accommodated in the supporting frame

Claim 28 – attaching a supporting frame and radiator together.

Note that Figures 2, 6 and 7 do not illustrate the structure that accomplishes this.

Claims 28-33 – The method set forth in claim 28-33.

Note that this objection will be withdrawn if Applicant does not traverse the 102 rejection set forth below that the method of claim 28, and rejected claims depending from claim 28, is inherently taught by Kretschmer, et al.

5. The following inconsistencies were noted in the drawings:

A) The shape of reference numbers 12, 13 and 19 in Figure 2 does not appear consistent with the shape of reference numbers 12, 13 and 19 in Figure 7.

Also note that reference number 19 in Figure 7 appears to be a separate part from reference number 13, as opposed to Figure 2, which appears to show reference numbers 13 and 19 to be a single part.

Note reference numbers 13 and 19 form reference number 12, and claim 1 recites “an air guiding element (13) is constructed in one piece with the supporting frame”. Note this claim 1 recitation appears inconsistent with Figure 7.

See also claims 22 and 28 for a similar recitation.

B) Figure 7 shows reference number 17 to be the same structure as reference number 19. Figure 8 shows reference number 17 to be structure proximal reference number 18.

### ***Claim Objections***

6. Claims 1-33 are objected to because of the following:

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Art Unit: 3618

Note: The claims are considered to be replete with objectionable matter. Therefore, a comprehensive listing of all objectionable matter cannot be guaranteed. Applicant is advised to review all claims for unclear matter.

A) To improve wording, it is believed that the word "A" should precede the word "Motor" in the first line of claim 1.

Similarly, it is believed that the word "The" should precede the word "Motor" in the first line of claims 2-21.

Also, the recitation of "A method" in claims 29-33, should instead be "The method", since antecedent basis was already established for the method in claim 28.

B) Claim 1 recites "...wherein at least one radiator is accommodated in a supporting frame...".

This recited phrase is objected to due to the following:

The term "supporting frame" has been defined by the specification to be reference number 12. The radiator is reference number 9.

The word "in" in the above recitation implies that the radiator is "surrounded" by the supporting frame. Instead, Figure 6 shows that the supporting frame is merely "under" the supporting frame, as opposed to being "in" the supporting frame.

C) Claim 1 recites "...which air guiding element, together with the radiator, forms at least one of the first and second air guiding ducts".

This recited phrase is objected to due to the following:

The term "air guiding element" has been defined by the specification in paragraph 0019 to be reference number 13. The "first air guiding duct" has been

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Art Unit: 3618

defined by the specification to be reference number 10. The "second air guiding duct" has been defined by the specification to be reference number 11.

From this, and examination of Figure 6, it is taught by the disclosure that the air guiding element 13 and the radiator 9 forms only the second air guiding duct 11 and not the first air guiding duct 10, as set forth in the above limitation.

See also claims 22 and 28 for a similar objection.

D) Claim 3 recites "...wherein the supporting frame is composed of a frame-shaped top part and a transversely extending bottom part profiled in a rail shape".

This recitation is objected to due to the following:

1) Paragraph 0019 defines reference number 12 as "a supporting frame".

2) Paragraph 0021 recites "a transversely extending bottom part, which is profiled in a rail shape".

3) From this, the transversely extending bottom part, reference number 18, has been disclosed as a separate part from the supporting frame, reference number 12.

4) The above claim 3 limitation, in contrast, implies that structure associated with reference number 18 is part of the structure of the "supporting frame", reference number 12. As noted above, reference number 18 is separate structure from reference number 12.

See also claims 12-16, 24 and 29 for a similar objection.

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Art Unit: 3618

Also, the term "frame-shaped" in these claims is considered unclear, as reference number 12 is only above the radiator, as opposed to "surrounding" the radiator, such as a "picture frame" surrounds a picture.

E) A "blank space" is missing between the word "claim" and the number following this word in line 1 of claims 7, 8, 10 and 11.

F) A "blank space" is missing between the words "a" and "side" on the third to last line of claim 28.

G) Claim 28 recites "...attaching a supporting frame and radiator together".

This recited phrase is objected to, as the disclosure does not clearly set forth how the supporting frame 12 and radiator 9 are attached.

H) Claim 33 is objected to, as the claim is dependant upon both claim 29 and claim 5.

### ***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 1-33 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

A) Claim 1 recites "...a supporting frame fastened to an adjoining body...".



Lack of written description for the above recitation is due to the following:

1) Support for this recitation is best understood to be found in paragraph 0030 of the specification which recites "...The rearward set-off edge 43 of the air guiding housing 42 is, in sections, inserted into the profiled bottom part 18 and the top part 17 of the supporting frame 12 and is fixed, for example, by means of holding pins 44 (see Figure 6).

2) However, note that the "adjoining body" recited in the above claim 1 recitation is defined by paragraph 0019 to be reference number 2. Figure 6 only shows that the air duct housing 42 is fixed by hollow pin 44 to the supporting frame 12, and not to the adjoining body 2.

From this, it does not appear Applicant possessed the necessary details of how the supporting frame 42 is fastened to an adjoining body 2 at the time the invention was made.

See also claims 22 and 28 for a similar recitation.

B) Claim 20 recites "...wherein as a result of the arrangement of intermediate pieces between the top part and the bottom part, radiators of different heights can be accommodated in the supporting frame".

The Examiner can find no written description in the disclosure to indicate the Applicant had possession of the claimed invention of claim 20 at the time the invention was made.

See also claim 21.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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Art Unit: 3618

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 5-8, 11, 14, 17-21, 26, 27 and 31-33 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicants regard as their invention.

Note: The claims are considered to be replete with unclear matter. Therefore, a comprehensive listing of all unclear matter cannot be guaranteed. Applicant is advised to review all claims for unclear matter.

A) Claim 5 recites the limitation "the transversely extending air guiding element". There is insufficient antecedent basis for this limitation in the claim.

See also claims 26 and 31.

B) Claim 6 recites the abbreviations "PP GF30 and "PA 6.6". It is considered unclear what materials are being referred to by these abbreviations.

Note that identifying the actual materials represented by these abbreviations may constitute new matter, unless Applicant can provide evidence that one of ordinary skill in the art would recognize the actual material by these abbreviations.

See also claims 7 and 8.

C) Claim 17 recites the limitation "the body-side holding". There is insufficient antecedent basis for this limitation in the claim.

See also claims 18, 19, 27, 32 and 33

D) Claim 17 recites "...the body-side holding...". It is considered unclear what portion of the supporting bracket comprises the "the body-side holding" since this term does not correspond to nomenclature used in the specification, particularly

Art Unit: 3618

nomenclature associated with a reference number and related to structure on the drawing figures.

Note that Section 608.01 (o) and 2173.05(a) of the MPEP requires that nomenclature used in the claims be apparent from the specification, unless it is apparent from the prior art.

Note that Section 608.01(g) of the MPEP also recites "The description is a dictionary for the claims and should provide clear antecedent basis for all terms used in the claims".

See also claims 18, 19, 27, 32 and 33

E) Claim 20 recites the limitation "the arrangement of intermediate pieces".

There is insufficient antecedent basis for this limitation in the claim.

See also claim 21

F) Claim 20 recites "...intermediate pieces...". It is considered unclear what portion of the supporting bracket comprises the "intermediate pieces " since this term does not correspond to nomenclature used in the specification, particularly nomenclature associated with a reference number and related to structure on the drawing figures.

See also claim 21

### ***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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Art Unit: 3618

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-3, 22-24, 28 and 29, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Kretschmer, et al, US Patent 4,673,206.

Kretschmer teaches a motor vehicle having at least one radiator (14) which, on an air input side, has a first air guiding duct (14) with a cooling-air inlet opening (5) and, on an air output side, has a second air guiding duct (15) with a cooling-air outlet opening (7), wherein at least one radiator is accommodated in (see claim objection regarding this term), a supporting frame (15 – portion proximal radiator) fastened (Figure 5) to an adjoining body (9), and wherein an air guiding element (15 – portion distal radiator) is constructed in one piece with the supporting frame (Figure 2), which air guiding element, together with the radiator, forms at least one of the first (not selected) and second (selected) air guiding ducts (Figure 2).

Regarding claims 3, 24 and 29, see the claim objections to these claims.

Regarding the recitation of “rail shape” in these claims, see reference number 6 of Figure 2.

Regarding claim 28, it is the Examiner's position that Kretschmer, et al anticipates the claimed method because the method is inherently disclosed. The rationale for this inherency is that the prior art device, in its normal and usual operation, would necessarily perform the claimed method. See MPEP §2112.02. See *In re King*, 801 F2d 1324, 1326; 231 USPQ 136, 138 (Fed Cir 1986).

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 6, 9, 12, 15 and 16, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kretschmer, et al, US Patent 4,673,206.

Kretschmer fails to teach the material of the top or bottom parts.

However, note that it is considered within the skill level of one of ordinary skill in the art to select a material based on its intended use. See *In re Leshin*, 125 USPQ 416.

Making the top part of a plastic material is advantageous in that plastic is lightweight and easily formed.

Making the top part of a light metal diecasting is advantageous in that the metal is relatively light in weight and casting may be an easier process to form a metal part, than for example, by stamping.

Making the bottom part of aluminum is advantageous in that aluminum is non-corrosive and lightweight. Making the bottom part of steel is advantageous in that steel is relatively strong.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made manufacture the top part of Kretschmer of plastic and a light metal casting, and the bottom part of Kretschmer of aluminum or steel.

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Art Unit: 3618

**Conclusion**


15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Burst, Fachback, et al, Janssen, et al, Kirchweger, Scadding, Lovelace, Weidmann, et al, Iwasaki, et al, Case and JP 58-101824 – teach airflow through a radiator

16. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bryan Fischmann whose telephone number is (571) 272-6694. The examiner can normally be reached on Monday through Friday from 8:30 to 5:00.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis, can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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BRYAN FISCHMANN  
PRIMARY EXAMINER